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No. 99-1529

IN THE

Supreme Court of the United States

DONNA RAE EGELHOFF,

Petitioner,

v.

SAMANTHA EGELHOFF, A MINOR, BY AND THROUGH HER NATURAL PARENT KATE BREINER and DAVID EGELHOFF,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

MOTION OF THE AMERICAN COUNCIL OF LIFE INSURERS FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE* IN SUPPORT OF CERTIORARI

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Pursuant to this Court's Rule 37.2(b), the American Council of Life Insurers ("ACLI") respectfully moves for leave to file the attached brief *amicus curiae* in this case. The consent of the attorney for petitioner, William Kilberg, Esq., has been obtained. The consent of the attorney for respondents, Michael W. Jordan, Esq., was requested but refused.

Amicus ACLI is based in Washington, D.C., and is an association representing 435 legal reserve life insurance companies, accounting for over 73% of life insurance and over 82% of pension business with such companies in the United States.

The insurance industry represented by *Amicus* ACLI is extremely concerned with the implications of this case for the future of employer-sponsored life insurance coverage. The Washington State Supreme Court held in the decision below that a state probate statute, Wash. Rev. Code § 11.07.010, is not preempted by the Employee Retirement Income Security Act, 29 U.S.C. § 1144(a) (1999) (ERISA), even with respect to the pension plan. Thus, the Court allowed a state statute to override and nullify the deceased's beneficiary designations under both his life insurance plan and a pension plan. *Egelhoff v. Egelhoff*, 139 Wash. 2d 557, 989 P.2d 80 (1999).

ACLI has a unique perspective on the impact that this decision will have on its members' ability to offer and administer life insurance and death benefits through employer-sponsored plans. In filing this brief, ACLI seeks to bring to the Court's attention matters that have not been fully addressed by the parties regarding the negative effects of the decision below on the provision of life insurance benefits.

Respectfully submitted,

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STATEMENT OF INTEREST

The American Council of Life Insurance ("ACLI"), based in Washington, D.C., is an association representing 435 legal reserve life insurance companies, accounting for over 73% of life insurance and over 82% of pension business with such companies in the United States.[1]

The insurance industry represented by *Amicus* ACLI is extremely concerned with the implications of the holding below for the future of employer-sponsored life insurance coverage. Relying on an inappropriately narrow reading of the preemption clause in the Employee Retirement Income Security Act, 29 U.S.C. § 1144(a) (1999) ("ERISA"), the Washington State Supreme Court has held that a state probate statute, Wash. Rev. Code § 11.07.010 (the "Statute"), can nullify the disposition of plan benefits made in accordance with the terms of ERISA. As a result, in this case the decedent's express designation of petitioner, his former wife, as beneficiary under both his life insurance and pension plans was nullified by the Statute's mandatory presumption that his former wife as a matter of law "died at the time of entry of the decree of dissolution."[2]

The ruling of the Washington Supreme Court has jeopardized the future of employer-sponsored life insurance benefit plans covering millions of Americans. According to the Federal Bureau of Labor Statistics, 74% of all Americans employed on a full-time basis are covered by employer-sponsored life insurance.[3] The percentage is even higher for

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1. Counsel for *Amicus* were the sole authors of this brief. No person or entity other than *Amicus* made a financial contribution to this brief.

2. *Egelhoff v. Egelhoff*, 139 Wash. 2d 557, 575, 989 P.2d 80, 90 (1999).

3. Ann C. Foster, *Brief: Life Insurance*, Compensation and Working Conditions, Winter 1997, at 53.

public sector employees — 87%.[4] Life insurance is considered so valuable a benefit in attracting and retaining qualified workers that fully 85% of both private and public employers pay for the full cost of such insurance.[5]

If the opinion of the Washington Court is allowed to stand, life insurance inevitably will become more expensive, more difficult to administer, and less accessible for Americans. Statutes like Washington's will succeed in eroding or eliminating the bases for the utility of life insurance as a financial management and estate planning tool: its certainty and its liquidity in the wake of the insured's death. Life insurance proceeds are designed to be readily accessible to beneficiaries. Once the insurer receives proof of an insured's death, payment of the death benefit to the designated beneficiary is normally an expeditious procedure.

The named beneficiaries of the millions of life insurance policies in effect in this country are entitled to rely on an expectation that they will receive the proceeds of these policies when making critical future financial decisions for themselves, their families, and their businesses. Life insurance serves numerous socially beneficial functions; the proceeds from a policy can provide funds to keep a business functioning after the death of its principal, to pay for a child's education, to pay off a mortgage, to provide for additional retirement income, and to encourage gifts to charity.

The Statute will defeat the legitimate expectations of named plan beneficiaries, as well as those of plan participants, who will no longer have an absolute right to decide for themselves who their beneficiaries should be. So too, the plan sponsors,

4. *Id.* at 54 (citing *Employee Benefits in State and Local Governments*, Bulletin 2477, Bureau of Labor Statistics (1994)). *See also* Buist M. Anderson, *Anderson on Life Insurance* § 1.6 at 22 (1991) ("Every large employer, including the federal government, provides group life insurance for its employees.").

5. Foster, *supra* note 3, at 55.

fiduciaries, and administrators of ERISA plans need to be able to decide what types of benefits to offer to plan participants, and to ascertain their rights and liabilities in regard to those benefits with certainty. Yet the ruling at issue imposes an impossible burden on them, allowing each state to dictate how the beneficiary of a life insurance policy will be determined, and frustrating ERISA's goal of achieving uniformity and consistency in benefits administration by preventing them from offering *uniform* life insurance and death benefits.

Such a result runs counter to strong federal policy in this area aimed at encouraging employers to establish the retirement and welfare plans that most Americans and their families depend upon for their post-retirement income, health care benefits, and life insurance benefits.[6] As for insurers, the rationale of the decision makes it infeasible for them to issue life insurance coverage to a multi-state employer group that is both *predictable* with respect to the observance of beneficiary designations, and *affordable, i.e.*, that constrains premium rates and plan costs both by achieving economies through uniform administration of policy benefits, and by avoiding expensive and time-consuming challenges resulting from inconsistent state directives and conflicting beneficiary claims.

SUMMARY OF ARGUMENT IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

This case concerns a dispute regarding employer-provided benefits between a decedent's children from a prior marriage and a subsequent spouse, similar to the circumstance presented in this Court's prior decision in *Boggs v. Boggs*, 520 U.S. 833 (1997). In *Boggs*, this Court held that ERISA preempted a state

6. Congress insisted on the certainty of rights and obligations under ERISA, noting in Title I that "employees with long years of employment are losing anticipated retirement benefits owing to the lack of vesting provisions in such plans," and that "employees and their beneficiaries have been deprived of anticipated benefits." ERISA § 2(a), 29 U.S.C. § 1001(a).

statute that would allow a non-participant spouse to transfer an interest in her husband's pension funds to her sons. Although the Court acknowledged that descent, distribution, and marital issues are quintessential examples of traditional areas of state concern,[7] it found that ERISA's strong anti-alienation provisions preempted the state statute.[8]

Here in *Egelhoff*, a deceased participant's children have asserted state law-based claims to the proceeds of ERISA pension and welfare benefit plans (the latter encompassing life insurance benefits), although they are neither participants nor beneficiaries in these plans.[9] The Washington Supreme Court has now ruled, contrary to the holding of *Boggs*, that the Statute at issue here, Wash. Rev. Code § 11.07.010(2)(a), which automatically revokes the designated beneficiary status of a spouse upon divorce, does not run afoul of ERISA.[10] Whether there is found here to be a "direct clash" with ERISA's objectives, in the words of the *Boggs* Court,[11] or whether ERISA's preemption clause is applied,[12] the result should be the same: this Court should grant certiorari and conclude that the Washington "state law cannot stand."[13]

Most likely, the Washington legislature enacted Wash. Rev. Code § 11.07.010 to solve what it perceived to be an endemic social problem — insureds "forgetting" to change their

7. *Boggs*, 520 U.S. at 839-40.

8. ERISA § 206(d), 29 U.S.C. § 1056(d), *cited in Boggs*, 520 U.S. at 851.

9. In order to have standing to file a suit for benefits under ERISA, an individual must either be a participant or beneficiary of the plan. ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B).

10. *Egelhoff*, 989 P.2d at 92 (citing ERISA § 206(d)(1), 29 U.S.C. § 1056(d)(1)).

11. *Boggs*, 520 U.S. at 844.

12. ERISA § 514(a), 29 U.S.C. § 1144(a).

13. *Boggs*, 520 U.S. at 844.

beneficiaries after a divorce. This paternalistic measure, ostensibly taken "to save policyholders from themselves (and presumably greedy former spouses),"[14] directly interferes with the federal statutory scheme created by Congress in ERISA that seeks to insure that both pension and welfare plans are administered consistently and in accordance with the "documents and instruments governing the plan."[15]

Congress enacted ERISA in 1974 to: (1) protect plan participants and beneficiaries,[16] (2) assure uniformity and efficiency in plan administration,[17] and (3) create incentives for the creation and maintenance of employee benefit plans.[18] *Every one of those Congressional goals would be frustrated by allowing state law, at the option of each state, to trump the beneficiary designation of an ERISA plan.*

14. Jeffrey W. Stempel, *Law of Insurance* § 18.02[c], at 18-12 (1994).

15. ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D).

16. *Boggs*, 520 U.S. at 845 ("The principal object of the statute is to protect plan participants and beneficiaries.") (citing *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 90 (1983)). The statute itself notes that the express purpose is "to protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaries." 29 U.S.C. § 1001(b).

17. *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 656 (1995).

18. *Fort Halifax Packing v. Coyne*, 482 U.S. 1, 11 (1987) ("A patchwork scheme of regulation would introduce considerable inefficiencies in the benefit program operation, which might lead those employers with existing plans to reduce benefits, and those without such plans to refrain from adopting them."). The U.S. Tax Code, in addition, provides incentives both for employers to establish qualified benefit plans as well as for employees to participate in them, since a contribution to a qualified plan is immediately deductible by the employer and only becomes taxable to the employee on subsequent distribution. I.R.C. § 404.

The *Egelhoff* decision, rather than protecting plan participants and their beneficiaries, instead undermines the very reasons they value life insurance — its certainty and its liquidity. The Statute defeats the legitimate expectations of both participants and designated beneficiaries on the basis of an unsubstantiated assumption that insureds inevitably will act incompetently with respect to a highly personal decision. From an insured participant's perspective, the payment of insurance proceeds to someone other than the person intended to be the recipient is the substantive equivalent of a failure to provide the promised benefit.

The decision also creates substantial administrative uncertainties under ERISA for plan sponsors, plan fiduciaries, and life insurance companies. If it is upheld, neither plan sponsors nor fiduciaries could provide an insured death benefit which allows the covered plan participant to select the ultimate beneficiary.

The threat of regulation by inconsistent state laws would drive employers to self-fund life insurance and death benefits, *i.e.*, fund those benefits from their own assets or through a trust.[19] That alternative is economically infeasible for all but the very largest of employers, and likely would be an imprudent use of sponsor and plan assets. Instead of incentives to create benefit plans, the decision below will discourage employers from offering and life insurers from providing reasonably-priced life insurance, by increasing costs related to the determination of the proper beneficiary, and requiring plan administrators and insurers to inquire into their employees' personal matters. It

19. As this Court summarized it in *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 732 (1985), employee welfare plans "may self-insure or they may purchase insurance for their participants. Plans that purchase insurance — so-called 'insured plans' — are directly affected by state laws that regulate the insurance industry," pursuant to ERISA's "insurance saving clause," § 514(b)(2)(A), 29 U.S.C. § 1144(b)(2)(A), which exempts from preemption "any law of any State which regulates insurance, banking, or securities."

would also inspire corrosive intra-family litigation and costly interpleader actions, and would likely force life insurers to make duplicate payments to settle claims.

ARGUMENT

A. The Washington Statute Violates Congress' Intent to Subject Plan Administrators to a Uniform Body of Benefits Law

In *New York State Conference of Blue Cross and Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 646 (1995), this Court specifically noted that one of ERISA's objectives was to promote the "nationally uniform administration of employee benefit plans." The Court recognized that in enacting ERISA, Congress intended:

> to ensure that plans and plan sponsors would be subject to a uniform body of benefits law; the goal was to minimize the administrative and financial burden of complying with conflicting directives among States or between States and the Federal Government . . . , [and to prevent] the potential for conflict in substantive law . . . *requiring the tailoring of plans and employer conduct to the peculiarities of the law of each jurisdiction.*[20] (emphasis added).

Allowing multiple state statutes to affect the interpretation and administration of employee benefit plans (including the disposition of pension plan assets, which may include insurance policies) will have a dramatic effect on plan sponsors and administrators. They will be forced to administer these plans differently in different states, contrary to Congressional intent that plans not be subject to piecemeal regulation. Moreover, administering the plans in accordance with varying state laws will subject plan fiduciaries to potentially devastating claims for breach of fiduciary duty because Congress has made the

20. *Travelers*, 514 U.S. at 656-57 (quoting *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 142 (1995)).

prior determination in ERISA that a plan fiduciary must "discharge his duties with respect to a plan . . . in accordance with the documents and instruments governing the plan,"[21] not in accordance with those state laws.

The State Supreme Court clearly erred in holding that the Statute is not preempted under ERISA because it "does not alter the nature of the plan itself, the administrator's fiduciary duties, or the requirements for plan administration."[22] The Statute unquestionably impacts upon all three elements: (1) it alters the plan of benefits substantially by mandating that written directives as to designation of a beneficiary be superseded if inconsistent with state law; (2) it substitutes state probate law principles, and obligates plan administrators to follow those principles, by requiring plans to pay benefits in a manner that is in direct conflict with both the plan requirements and the written instructions of the decedent, thus violating the fiduciary duty to follow the terms of the plan documents; and (3) it interferes with plan administration and alters the administrators' duties by requiring them to keep track of changes in plan participants' marital status, and to ascertain the effect of Washington's probate law on each participant's circumstances.

The Washington Supreme Court attempts to minimize the negative impact of its decision on uniform plan administration by insisting that while the Statute "may operate upon the beneficiary designation in an ERISA plan," it does not "direct payment of proceeds," nor disturb the beneficiary designation since benefits "remain to be distributed in accord with the plan documents under ERISA."[23] That conclusion is not accurate, because the Statute has created competing ownership interests that conflict with those prescribed by the ERISA plan documents. This is a complete and plain usurpation by the State

21. 29 U.S.C. § 1104(a)(1)(D).

22. *Egelhoff*, 989 P.2d at 90.

23. *Egelhoff*, 989 P.2d at 90, 91.

of an ERISA plan's benefit structure that empowers the plan participant, and the participant alone, to decide the identity of his or her beneficiary.

Far from an issue that merely "brushes against the periphery of an ERISA plan," as the Washington Supreme Court believes,[24] its holding here stands for the proposition that each of the states can control the rights of ERISA plan participants and specify the recipients of ERISA plan benefits. It may be that in some cases (such as Washington state's), the beneficiary is altered only in specific circumstances, such as when "a marriage is dissolved or invalidated . . ."[25] Other jurisdictions have attempted to enact laws whereby such beneficiary designations are altered by state law only if the beneficiary fails to re-designate his or her ex-spouse.[26] Plan sponsors such as multi-state employers will justifiably consider it a nightmare to have to coordinate, in each state, the distribution of benefits in compliance. The Statute thus must be struck down as directly contrary to the strong federal policy in favor of a "uniform body of benefits law," as it imposes on benefit plans (both health and welfare and pension plans) those very "conflicting directives" that ERISA forbids.

B. State Law Cannot Be Allowed to Defeat the Expectations of ERISA Plan Members and Beneficiaries.

As this Court emphasized in *Boggs*, ERISA was enacted to ensure that plan participants and their beneficiaries would receive their expected benefits. For example, a primary purpose

24. *Egelhoff*, 989 P.2d at 88 (quoting *Emard v. Hughes Aircraft Co.*, 153 F.3d 949, 961 (9th Cir. 1998), *cert. denied*, 525 U.S. 1122 (1999)).

25. Wash. Rev. Code § 11.07.010(2)(a).

26. *See, e.g., Brandon v. Travelers Ins. Co. & Abbott Labs.*, 18 F.3d 1321 (5th Cir. 1994) (holding preempted by ERISA such an attempt by the Texas legislature to require a re-designation of an ex-spouse after a divorce in order to maintain him or her as the designated beneficiary on a life insurance policy).

of ERISA's qualified survivor annuity provisions is to "ensure an income stream" to spouses,[27] while ERISA's anti-alienation provision is intended to provide the same income stream to participants and beneficiaries.[28]

Those provisions in ERISA cannot co-exist with the decision of the Washington Supreme Court holding that the State probate statute at issue here is saved from preemption under ERISA Section 514 because it allegedly does not "affect the administration of ERISA plans but '*merely the ultimate ownership of distributed benefits.*' "[29] That description of the effect of the Statute is inaccurate. The "ultimate ownership" determination alters the manner in which ERISA plans determine to whom distribution must be made. Currently, administrators need only look up and apply the participant's current written beneficiary designation. Under the Statute, where the beneficiary is a spouse, the plan administrator first must determine whether that relationship to the participant has changed, and if so, must ascertain the nature of the changed circumstances and form a legal conclusion as to the effect of the State's probate law on the plan's distributive obligation. That process, the Washington Supreme Court's opinion notwithstanding, has a direct and material impact on plan administration.

From the beneficiary's point of view, "ultimate ownership" is not an afterthought, but rather precisely the substantive purpose of his or her designation as a beneficiary. Whether those benefits have been distributed, or are awaiting future distribution, is immaterial. The Statute *presently* determines the criteria pursuant to which the distribution *must* take place, substituting its provisions for the plan's criteria defining the participant's benefit entitlement.

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27. *Boggs*, 520 U.S. at 843.

28. *Id.* at 852. *See also Guidry v. Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365, 376 (1990).

29. 989 P.2d at 90 (quoting *Emard*, 153 F.3d at 959).

As this Court held in *Boggs*, ERISA's anti-alienation rules protect plan benefits regardless of whether they "have been distributed" or they are as yet "undistributed."[30] Any other rule would conflict with strong Congressional policy embodied in ERISA to preserve benefits for pension plan participants and beneficiaries. The Statute here, however, operates as an alienation of plan benefits by the State for the purpose of effectuating an involuntary reallocation.

Consider the scenario where a decedent deliberately left an ex-spouse as a named beneficiary in a life insurance policy, perhaps as part and parcel of an informal agreement between the people involved, or to protect children who are still minors, and now finds his or her choice — after death, and hence irrevocably — overruled by state law.[31] Plan sponsors and administrators are entitled to, and under the plan must, assume that the vast majority of participants who fill out a beneficiary designation form have done so deliberately and with the expectation that their choices will be complied with, and should not be made to accept the paternalistic assumption inherent in the Washington State Statute that the participants' choices must be negated.

Moreover, this inappropriate paternalism paradoxically runs afoul of other State policy allowing and even encouraging adult citizens to prescribe advanced directives not only for disposition of their worldly assets (as in a will or trust), but to execute documents such as living wills to declare their intentions as to other very personal decisions — for example, the extent of medical treatment they desire should they be unable to make

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30. *Boggs*, 520 U.S. at 854.

31. *See John Hancock Mut. Life Ins. Co. v. Timbo*, 67 F. Supp. 2d 413, 422 (D.N.J. 1999) (finding that former wife did not waive interest in proceeds of insurance policy bolstered by fact that "throughout the post-divorce period decedent continued to assure her that she would 'be taken care of' at his death.").

such a determination in the future.[32] Instead, the State here has made that decision for presumably competent adults merely by the fact of a divorce, no matter that they have left written instructions with their plan administrators that the death benefit be paid to a former spouse.

The application of statutes such as that sustained by the Washington Supreme Court also defeat beneficiary expectations by inevitably creating delay and increased costs, in part negating the protective purpose of life insurance. Delay occurs as insurance companies and plan administrators are required to parse state laws in each case to determine whether, when, and how a beneficiary designation is to be overridden. Plan sponsors and insurers may be forced to join the competing beneficiaries as defendants in interpleader actions to prevent double or multiple liability. This administrative nightmare inevitably will cause delay and sharply increased costs.[33]

Such litigation not only delays payment of the life insurance benefit,[34] but may even "eat up" all of the insurance proceeds, leaving the winner with a Pyrrhic victory and possibly creating even more discord among competing family members. A noted authority on life insurance points out that the "increase in the

32. *See, e.g.*, Wash. Rev. Code § 70.122.030 ("Directive to withhold or withdraw life-sustaining treatment"); *see also* Cal. Health & Safety Code § 7185.5(d); Fla. Stat. Ann. § 765.102(1); N.Y. Pub. Health Law § 2964(2)(a).

33. *See, e.g.*, *Metropolitan Life Ins. Co. v. Pettit*, 164 F.3d 857 (4th Cir. 1998), where a life insurer was forced to file an interpleader action to allow a court to determine whether the insured's widow or his former wife was entitled to insurance proceeds. 164 F.3d at 859. The court held that the former wife's claim, which sought to impose a constructive trust on life insurance proceeds due under the ERISA plan, was preempted as directly affecting the distribution of plan benefits. 164 F.3d at 865.

34. For example, a final judgment in *Krishna v. Colgate Palmolive Co.*, 7 F.3d 11 (2d Cir. 1993), was nearly four years in coming after the insured's death. *Id.* at 13.

amounts of life insurance, both individual and group, makes it worthwhile to litigate," with such litigation unfortunately serving "to deplete the policy proceeds."[35] Dissipation of policy proceeds is likely where, as here in *Egelhoff*, the life insurance benefits claimed by both litigants amount to only $46,000 (*Appendix to Petitioner's Petition for a Writ of Certiorari*, p. 4a), while the pension benefits total only $35,000 (*Id.* at 6a).

Nor does the Washington law serve the admittedly laudatory purpose of protecting participant choice. Choosing one's beneficiary is normally a simple administrative task: all that is required is to fill out a beneficiary designation card, which is then returned to the plan administrator. Both pension and welfare plan documents uniformly provide that the participant (unless incapacitated) is responsible to notify the plan administrator, in writing, of his or her choice of beneficiary or any change in his beneficiary designation. The Statute at issue here, however, assumes that a plan member is incapable of performing that task, or has neglected to do so, when there has been no challenge to capacity. In situations where a plan member has deliberately chosen not to change his or her beneficiary designation, despite a divorce, the State law steps in and automatically "revokes" a designation that is totally in accord with the participant's wishes.

In sum, the decision of the Washington court clearly runs afoul of Congress's intent in ERISA by allowing state legislation to amend plan benefit structures and to thus defeat the legitimate expectations of plan members. This Statute and similar laws will diminish the value of life insurance and pension benefits by delaying their distribution and generating costly litigation over beneficiary designation and entitlement to benefits.

35. Anderson, *supra* note 4, § 18.10, at 544.

C. The Decision Below Discourages Employers from Sponsoring, and Life Insurers From Providing, Reasonably-Priced Life Insurance Benefits

Rather than foster the Congressional goal, as expressed in ERISA, of permitting "the nationally uniform administration of employee benefit plans"[36] and creating incentives for plan sponsors to establish and maintain employee benefit plans, the Statute imposes on them and upon their insurers an entirely new set of duties and risks. Sponsors and insurers now must determine the validity of beneficiary designations under each jurisdiction in which a plan is offered or maintained, exposing themselves to the threat of lawsuits challenging whatever decision they make.

First, the costs that will be incurred in the determination of the "proper" beneficiary, especially in the inevitable cases of multiple competing claimants, will necessarily be charged to the plan and in turn will make the benefits or insurance policy more expensive for claimants as well as plan administrators.

Second, the prospect of paying more than once for the same claim (as is possible here) will give pause to both insurers and employers who are deciding whether to continue to sponsor and fund these types of benefit plans. This "dual payment" scenario may become more frequent as administrators find that that they have paid life insurance benefits to a beneficiary designated by a decedent in his or her welfare plan, only to be faced with a state court order (whether as a result of a statute like Wash. Rev. Code § 11.07.010, a state law divorce decree, or a state law of constructive trusts) that a different beneficiary be paid.

No matter how carefully an ERISA plan is constructed, or how frequently the plan sponsor or administrator requests that employees update their beneficiary designations, state laws such as the Statute at issue here will generate significant

36. *Travelers*, 514 U.S. at 656.

administrative difficulties. What if, for example, a participant is employed by company "A" in Minnesota and is married with children. Company A provides an ERISA benefit plan which includes life insurance in an amount equal to one year's salary. The participant names his wife as the beneficiary. A year later, the participant is offered a significant promotion involving a transfer to the State of Washington. His spouse prefers Minnesota to the marriage and Washington and they reach an amicable agreement to divorce. The divorce becomes final while he is in Washington. A year later the participant remarries, but does not change the beneficiary designation. His new wife has a child by a prior marriage whom the participant does not adopt. Two years later, the participant and his new wife are killed in an accident, and her child claims that under the Statute and Washington's probate laws, he is the proper ultimate recipient of the husband's life insurance proceeds. The complexity of the litigation that is likely to ensue is patent, as is the burden such litigation could impose upon Company A's ERISA plan, its insurance carrier, and the participant's designated beneficiary. The Washington State Court's decision that the Statute is not preempted by ERISA becomes the sole spark for such extensive litigation requiring the involvement of the ERISA plan or its insurance carrier.

This hypothetical scenario illustrates the clear disincentive that sponsors or administrators of multi-state plans will now have to create and support such plans. The increased costs and more complex administration are deterrents, rendering the cost of providing life insurance benefits prohibitive. Insurers themselves will be forced to raise premiums to compensate for the inevitable increase in interpleader actions and rise in incidence of conflicting judgments demanding payments to warring beneficiaries.

D. State "Domestic Relations Laws" Cannot Be Allowed to Override ERISA

As part of its unilateral determination that this Court's *Travelers* opinion has substantially altered ERISA preemption, the Egelhoff decision contends that the Statute at issue is not preempted because it involves "domestic relations and family law, [which] is an area of law historically left to state control."[37] This simplistic and wholly unsound rationale simply glosses over this Court's decision in *Boggs*,[38] subsequent to *Travelers*, which flatly rejected a doctrine that state probate and domestic relations laws automatically trump beneficiary rules prescribed by ERISA-qualified welfare and pension plans.

In addition, that conclusion is predicated on a grossly overbroad definition of the scope of "domestic relations" law reserved to the states, a definition that goes far beyond existing precedent and is contrary to ERISA's specific language. This Court has held that the federal courts are divested of power under Article III of the Constitution in very limited circumstances, namely, "to issue *divorce, alimony, and child custody decrees*."[39] Those categories, and those alone, define the domestic relations law authority reserved to the states. The Statute upheld in *Egelhoff* does not involve any state-law based claims to the proceeds of ERISA pension and welfare benefit plans. The State's assertion that it can dictate the disposition of ERISA plan benefits is not a "domestic relations" issue, but instead an arrogation of authority in a purely federal preserve.

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37. *Egelhoff*, 989 P.2d at 92.

38. *Boggs*, 520 U.S. at 841.

39. *Ankenbrandt v. Richards*, 504 U.S. 689, 703 (1992) ("The domestic relations exception, as articulated by this Court since *Barber* [*v. Barber*, 62 U.S. (21 How.) 582 (1858)], divests the federal courts of power to issue *divorce, alimony, and child custody* decrees.") (emphasis supplied).

Nor has Congress hesitated to amend ERISA as it impacts an area at the heart of what the Washington Court deems "domestic relations and family law." For example, Congress enacted ERISA's anti-alienation provision[40] to ensure that pension benefits are not diverted before they are distributed to the participant or beneficiary for whom they are intended, normally a spouse or children. Alienation under ERISA can be accomplished only in one specific way: by employing a qualified domestic relations order ("QDRO").[41] No suggestion has been made that a QDRO is involved here.

A state cannot be permitted to end-run ERISA's requirement that a plan must abide by "documents and instruments governing the plan"[42] whenever it asserts, in its discretion, that its own "domestic relations" issues are involved. The upshot would be nullification of virtually all ERISA plan criteria governing death benefit and pension beneficiary designations, as well as nullification of ERISA's preemption provisions. Such an untenable position would presumably leave intact only beneficiary designations of non-family members, such as occurs in "key man" insurance policies.

Finally, the "domestic relations" exception to preemption contrived in *Egelhoff* cannot be reconciled with an unbroken line of cases in which this Court has consistently protected beneficiary designations for life and retirement benefits mandated by federal programs against interference from state probate and family law requirements. *See, e.g., Ridgway v. Ridgway*, 454 U.S. 46 (1981), where this Court held that the

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40. *See* 29 U.S.C. § 1056(d)(1), enacted pursuant to the Retirement Equity Act of 1984, Pub. L. No. 98-397, 98 Stat. 1426. *See also Boggs*, 520 U.S. at 851; 29 U.S.C. §§ 1056(d)(3)(A), 1144(b)(7).

41. ERISA requires a plan to pay pension benefits to an alternate payee pursuant to a state domestic relations order if the order meets the specific requirements prescribed in 29 U.S.C. §§ 1056(d)(3)(A), 1144(b)(7).

42. 29 U.S.C. § 1104(a)(1)(D).

beneficiary designation under the Servicemen's Group Life Insurance Act, 38 U.S.C. § 765, *et seq.*, prevailed over a state constructive trust for the benefit of another. *See also Hisquierdo v. Hisquierdo*, 439 U.S. 572 (1979) (benefits payable under the U.S. Railroad Retirement Act may not be divided under the community property laws of California); *Mansell v. Mansell*, 490 U.S. 581 (1989) (Uniformed Services Former Spouses' Protection Act, 10 U.S.C. § 1408, did not grant state courts the power to treat as property divisible upon divorce military retirement pay waived by the retiree in order to receive veterans' disability benefits.)[43]

The *Egelhoff* decision runs contrary to the plainly expressed purpose of Congress to forbid states from interfering with the consistent and uniform provision of benefits provided through plans subject to federal statutory regulation. The "domestic relations" rationale for the decision is a contrivance which collapses when examined in the context of the Statute's actual effects. The sum and substance of those effects is that states, through legislation such as this Statute, can dictate to ERISA plans, their participants and their designated beneficiaries, who actually will receive plan benefits, despite written instructions to the contrary and despite the mandate in ERISA that pension and welfare plans be administered consistently. ERISA preempts any such conduct by the states.

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43. The only exception to this consistent Federal jurisprudence is the aberrational situation noted in *Ridgway* involving so-called "state-slayer" statutes, where state law bars any beneficiary who has committed acts such as murder from inheriting from the decedent. Even in that exceptional (and thankfully rare) situation, however, the federal courts are careful to point out that the goal of uniformity of plan administration can still be achieved:

> Unlike state testamentary transfer laws, state laws prohibiting murderers from receiving death benefits are relatively uniform. Thus, there is little threat of creating a "patchwork scheme of regulation." *Fort Halifax Packing Co. v. Coyne*, 482 U.S. [at 11].

Mendez-Bellido v. Board of Trustees of Div. 1181, A.T.U. N.Y. Employees Pension Fund & Plan, 709 F. Supp. 329, 332 (E.D.N.Y. 1989) (citations omitted).

CONCLUSION

For the above reasons, *Amicus* ACLI respectfully requests that this Court grant the Petitioner's writ of certiorari and reverse the decision of the Washington State Supreme Court.

Respectfully submitted,

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